



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2005

Mr. Chris Settle  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2005-00271

Dear Mr. Settle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216368.

The Dallas Police Department (the "department") received a request for five categories of information pertaining to a named police officer. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you submitted for our review only certain hiring and polygraph records. You did not submit any of the remaining requested information or representative samples of the remaining information for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent any remaining information responsive to this request existed on the date that the department received the instant request, we assume that the department has released it to the requestor. If the department has not released any such information, the department must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

You contend that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The submitted documents include information relating to a polygraph examination. Section 1703.306 of the Occupations Code provides that "[a] governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information." Occ. Code § 1703.306(b). The department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You also claim that some of the submitted information is exempt from disclosure under section 552.117(a)(2). Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024 or 552.1175 of the Government Code.<sup>1</sup> The department must withhold the information we have marked under section 552.117(a)(2). *See* Open Records Decision No. 622 (1994).

Finally, you raise section 552.130 with regard to Texas driver's license information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. The department must withhold the information we have marked under section 552.130.

In summary, the department must withhold: 1) the information we have marked under section marked information under section 552.117(a)(2); and 3) the driver's license information under section 552.130. The remaining submitted information must be released to the requestor.

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<sup>1</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

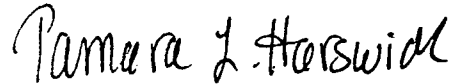
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Tamara L. Harswick". The script is cursive and fluid, with the first name being the most prominent.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 216368

Enc. Submitted documents

c: Mr. Kenneth H. Berry, Jr.  
Attorney at Law  
P.O. Box 810331  
Dallas, Texas 75381  
(w/o enclosures)